

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

11-19-07
04:59 PM

Order Instituting Rulemaking to Establish the
California Institute for Climate Solutions.

Rulemaking 07-09-008
(Filed September 20, 2007)

**REPLY COMMENTS OF PACIFICORP (U 901-E) ON ESTABLISHING THE
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

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INSTITUTE FOR CLIMATE SOLUTIONS**

Pursuant to *Order Instituting Rulemaking to Consider Establishing California Institute for Climate Solutions* dated September 25, 2007 (the "OIR"), PacifiCorp (U 901-E) respectfully submits these reply comments on the establishment of the California Institute for Climate Solutions ("CICS") proposal. On November 2, 2007, PacifiCorp and other parties filed opening comments in this proceeding on issues related to the establishment of the CICS. PacifiCorp is an interested party and appreciates the opportunity to comment in this proceeding.

I. DISCUSSION

A. The Commission Should Reject the Suggestion that Shareholders be Required to Pay for the CICS.

Within their opening comments, TURN asks the Commission to require shareholders to pay at least part of the cost of the CICS.¹ To support this claim, TURN argues that investor-owned utilities have historically profited from activities which now must be reversed and that they should not be "immune" from the costs of reversing these practices. These arguments are without basis and turn on their head long

¹ See TURN Comments at 7-8 (arguing that funding should be "below-the-line"); see also *Id.* at 9 (arguing that funds should come from utility shareholders, other industries covered by the scope of the effort, and other "non-ratepayer sources").

held concepts of ratemaking, including the requirement that the reasonable costs of serving the public become part of the investor-owned utility revenue requirement.

Given that the assets producing greenhouse gases - either physical generation assets owned by investor-owned utilities or power purchased pursuant to a power purchase agreement - have been deemed prudent by the Commission, they are, therefore, recoverable in rates. While TURN views the "profits" from utility operations to be fair game for use to fund the CICS, these returns were the result of a ratemaking process which, under Takings Clause case law, requires that shareholders be allowed an opportunity to earn a reasonable rate of return on assets used to provide service to the public.² TURN would unfairly deny utilities some portion of that opportunity.

To use shareholder assets for funding future activities which benefit customers with no opportunity to earn a return once these shareholder assets are put to use on behalf of the public would clearly violate this requirement and, therefore, result in a taking under the Federal and State Constitutions. Moreover, to retroactively use shareholder equity or earnings earned on activities deemed reasonable and prudent by the Commission as available for the benefit of customers with no opportunity to earn a reasonable rate of return would violate the proscription against retroactive ratemaking and reduction of accrued earnings.³ Lastly, to the extent TURN's argument for shareholder funding of the CICS due to historical actions taken on behalf of customers could be assessed as a penalty for wrongful behavior, the Commission has deemed these past actions to be prudent and reasonable and has, to PacifiCorp's knowledge, made no finding that any of the investor-owned utilities have violated any law or statute in relation to power purchases or owned-generation for emission of greenhouse gases. TURN's argument simply rides roughshod over statutory and constitutional requirements and should be rejected by the Commission.

² See, e.g. Bluefield Waterworks & Imp. Co. v. Public Service Commission, 262 U.S. 679 (1923).

³ See, Pub. Util. Code § 734, Pacific Tel. & Tel. Co. v. Public Utilities Com., (1965) 62 Cal. 2d 634, 652.

B. The Commission Should Seek a More Comprehensive Proposal from the University of California and Allow Parties to More Fully Comment.

PacifiCorp observed in its opening comments that the proposal submitted by the University of California is only preliminary, and the Commission anticipates further development of program and research priorities. Development of the program details will be a critical part as to whether PacifiCorp can support the establishment of the CICS. Thus far, it has been difficult to adequately comment on some aspects of the proposal. The Commission should request a more comprehensive proposal from the University of California and then allow parties additional opportunities to openly discuss the details of the proposal at a workshop or other meeting. Furthermore, if, ultimately, the establishment of and costs associated with the CICS becomes a utility customer-funded mandate, it would be appropriate to establish specific parameters relating to the types of efforts that are funded by customer dollars.

C. If the CICS is Launched at Utility Customer Expense, the Commission Should Adopt a Methodology that Ensures the Annual Funding Obligation Does Not Burden PacifiCorp's Customers

PacifiCorp generally expresses concern with the OIR to the extent the OIR intends for PacifiCorp's customers to bear the burden of funding the CICS. PacifiCorp's California customer base is limited, includes a significant proportion of low-income customers, and lacks relatively large industrial customers. In this context, if the CICS is nonetheless launched at utility customer expense, the annual cost of funding the CICS should be paid equally by all electricity and natural gas customers, but on a comparable "energy" basis. To the extent the annual costs are apportioned using a common energy metric, such as a British Thermal Unit (BTU)⁴ or calories, a greater share of the costs of the program will be borne by those who consume a greater amount of energy – electricity and natural gas – when compared to their peers.

D. The Commission Should Substantially Integrate the Community College System into the CICS Program

⁴ 10,000 BTU is roughly 2.93 kilowatt-hours of electricity or 9.7 cubic feet of natural gas.

As stated in PacifiCorp's opening remarks, its service territory is home to two community colleges: the College of the Redwoods located in Crescent City, California, and College of the Siskiyous located in Weed, California. There is no four-year state university institution located in PacifiCorp's service territory. PacifiCorp acknowledges ongoing discussions between state universities and the Commission to ensure the integration of other academic and research institutions into the CICS, including the Community College system. Accordingly, PacifiCorp again respectfully requests that the Commission give important consideration to substantially integrating the Community College system into the CICS program to ensure that program resources are equally distributed, including within PacifiCorp's service territory. Engagement of other institutions of higher learning will also result in a suitable framework to efficiently and effectively encourage broad participation in these programs.

II. CONCLUSION

PacifiCorp respectfully submits these reply comments for the Commission's consideration in establishing the CICS program. PacifiCorp looks forward to working with the Commission and other interested parties.

Respectfully submitted this November 19, 2007 at San Francisco, California.

By /s/ Ryan L. Flynn

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this 19th day of November, 2007 provided via electronic mail, a true and correct copy of **REPLY COMMENTS OF PACIFICORP ON ESTABLISHING THE CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS** to the following:

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